

DAVID BINDON,

Appellant.

WILLIAM RYVES,

Respondent.

## The Appellant's CASE.

**T**HE Appellant being a Merchant in Limerick, and having had considerable Dealings in and before the Year 1720, with the Respondent, who is a Merchant in Dublin, and with William Doyle, a Merchant in London; and hearing that the said Doyle had failed in his Credit, he, in the Month of July, 1720, wrote to the Respondent, who was Factor to the said Doyle, to enquire of the Truth thereof: And the Respondent answered the said Letter, and declared he saw no Reason for such Report, for that the said Doyle was in good Credit on the Change of Dublin.

The Appellant having then no Mistrust of Doyle's Circumstances, did lade on the Ship Henry, of London, a Cargo of Salmon and dried Fish of above 1200 l. Value, and consigned the same to Ralphson and Hewit, Merchants in Venice, two Thirds, for Account of the said Doyle, and the other third Part for the Appellant's own Use.

The said Doyle, in August and September, 1720, drew three Bills of Exchange on the Appellant, two of 500 l. each, and one for 400 l. payable to the Respondent, for Value in Account with him; and the Appellant relying on the Account given by the Respondent of the said Doyle's Credit, as afore-mentioned, accepted the same, tho' he did not owe so much Money to the said Doyle; but thro' the general Calamity of the Year 1720, which soon after happened, the Appellant being rendered incapable of paying the said Bills at the exact Time they became due, the Respondent caused them to be protested, and sent the Protests to Doyle, representing the Appellant's Affairs in a declining Condition.

Whereupon the said Doyle sent Directions to the said Ralphson and Hewit, to attach, in his Name, the Appellant's third Part of the Cargo consigned to them as afore said; and to justify such Attachment, he sent them the Protest he had received from the Respondent, and the said Ralphson and Hewit accordingly attached the same.

The Respondent Ryves having a General Letter of Attorney from the said Doyle, pressed the Appellant for Payment of the said Bills; and the Appellant not knowing his Effects at Venice were attached, and expecting an Allowance, on adjusting Accompts, for whatever the Bills exceeded what he owed the said Doyle, did, in order to preserve his Credit, and with an Intent to satisfy what was really due from him, consent to be charged with the said Bills; and for Payment thereof (but in Trust, nevertheless, for the said Doyle) on the 19th of November, 1720, did execute a Bond to the Respondent, with a Warrant of Attorney, to confess Judgment thereon, in the Penalty of 2500 l. conditioned for the Payment of 1480 l. being the Contents of the said Bills, together with the Sum of 80 l. due to the Respondent, in his own Right. And, as a further Security for the Payment thereof, assigned to the Respondent, a House and Cellar in Limerick, and a Moiety of the Ship Frances of Limerick, together with a Cargo of Beef, Butter, and Hydes, then on Board the same, and a sixth Part of the Success, of London, and her Cargo, and the Produce of the Appellant's third Part of the Ship Henry's Cargo of Salmon at Venice, whereupon, the Respondent gave up the said Bills to the Appellant to be cancelled.

The Respondent wrote a Letter to Doyle, and thereby acquainted him with his having made a Journey to Limerick to take the said Securities; and, in the same Letter says "Your Account has no Credit with me for all those Bills you sent me for 1400 l. on David Bindon, because there is not one Penny of them paid, and I must charge it, besides what is due, with the Charge I have been put to, to secure you that Money."

The Appellant having afterwards received Advice of the Attachment of his Effects at Venice, gave Notice thereof to the Respondent, and desired him to procure the said Attachment to be discharged; And the Respondent having also received an Account of the said Attachment from Stephens and Hamilton of Rotterdam (who were employed by him to withdraw the said Effects from Venice) wrote to Doyle to release the said Effects; and Doyle offered to release the same if the said Ryves would give his Account Credit for the said three Bills, or for the Security given by the Appellant for the same; but the said Ryves refusing to comply therewith, the Respondent Doyle wrote him a Letter, dated the 4th of January, 1720 (of which the said Ryves sent the Appellant a Copy) wherein Doyle says, That since his Account had not Credit with him the said Ryves for the Bills on the Appellant, the Appellant could consequently have no Credit with him the said Doyle, but was his Debtor for the same, and expressed his Intention of allowing thereout what was due from him to the Appellant, and that the Effects attached at Venice ought to be applied in Discharge of the Money due on the said Bills; and the said Doyle also, by a Letter to the said Ryves, and by verbal Declarations to his Correspondence in London, declared he would release the Effects in Venice, if the Respondent Ryves would give him Credit for the said Bills, which the said Ryves refused to do.

The Respondent prosecuted the Appellant on his Bond to an Outlawry, and obtained a Custodiam of his Estate, and endeavoured to arrest his Person, and filed a Bill in the Court of Exchequer in Ireland, to foreclose the Appellant's Equity of Redemption in the said House and Cellar at Limerick: To which Bill the Appellant having put in an Answer, the Respondent did not think fit to proceed, but by a fieri facias sold the said House and Cellar; and the said Doyle, besides seizing the Effects at Venice as afore said, did also recover a Sum of Money from James Moody, Master of the Success of London, on Account of the Appellant's sixth Part of the said Ship and her Cargo, assigned over to the Respondent as afore said.

The Appellant perceiving the Respondent and the said Doyle were for holding him as a Debtor to each of them for the same Debt, and endeavouring to make him pay the same twice over, did in Easter-Term, 1722, file his Bill in the said Court of Exchequer; and in Michaelmas-Term, 1723, filed his Supplemental Bill in the said Court against the Respondent, the said Doyle, and others, for an Injunction to stay the Respondent's Proceedings at Law, and for an Account, and an Allowance there- in,

( 2 )  
in, for 691 l. 3 s. 9 d. besides Interest and Charges thereon, due to the Appellant from the said Doyle, and also for the Value of the said Effects attached in Venice, amounting to 500 l. and upwards, and for 200 l. and upwards recovered by the said Doyle from James Moody, Master of the Ship, as aforesaid, and for 341 l. 2 s. 1 d. which the Respondent received for the Cargo of the Ship, and also for 40 l. and upwards received by him for Freight made by the said Ship, and for the Value of the Appellant's House and Cellar in Limerick, disposed of by the Respondent, and that the Respondent might set forth Copies of the Letters he wrote to, and received from the said Doyle, and the Nature of their Correspondence whereby the Trust might appear.

Respondent put in  
four insufficient  
Answers.

The Respondent put in four insufficient Answers to the Appellant's Supplemental Bill, and answered personal Interrogatories, of which he was allowed to take out a Copy.

The Respondent in his Answers confesses he was, in July, 1720, Factor for Doyle, on whose Account, *Otho Van Cappellan*, of *Dram* in *Norway*, consigned to him a Cargo of Deal Boards, and by a Letter to Doyle of the 8th December 1720, it appears, that some Part of the Produce of that Cargo was not then received by the Respondent.

He confesses he had a Letter of Attorney from Doyle, and that he gave Notice thereof to the Appellant by Writing, and otherwise, before the Appellant executed the said Bond and Deed of Assignment, that he charged Doyle's Account with usual Commission on the Bills: That the Appellant not paying the Bills when they became due, he caused them to be protested, and sent the Protests to Doyle. He admits that Doyle caused the Effects in Venice to be arrested by Virtue of the one of said Protests; and that the Bill on the Protest whereof the said Effects at Venice were attached, was included in the Securities given by the Appellant. That he charged the said Doyle's Account with 30 l. 6 s. 4 d. for the Expenses of his Journey; and that 19 l. 1 s. thereof was for his own Pains and Trouble in going to Limerick, to take the said Securities from the Appellant.

That on the 8th of December, 1720, the 24th of the same Month, the 12th of January following, and at several other Times, after delivering up of the said Bills, he refused to give Doyle Credit for the same. And he confesses, that Doyle by Letter to him, and by verbal Declarations to his Correspondents in London, Knox and Nesbitt, declared, That if he the Respondent would release him, and give him Credit for the said three Bills, or the Security given for them by the Appellant, that then he would cause the Attachment on the said Effects at Venice to be released, and that he the Respondent had refused so to do.

He confesses, that Doyle recovered a Sum of Money from James Moody, on Account of the Appellant's sixth Part of the Ship *Succell* and her Cargo, Assigned over to the Respondent.

25 June 1725.

The Respondent moved to dissolve an Injunction formerly obtained for Want of a sufficient Answer, but upon full Debate on the Equity, confessed in his several Answers, the same was continued to the Hearing of the Cause.

The Cause between the Appellant and the Respondent being at Issue, several Witnesses were examined, and the Cause was heard on the 19th and 21st of February, 1725; and in Easter-Term 1726, the same was further heard, and also further heard in Trinity-Term following; and it being then, and not before, objected, That Doyle was not a Party before the Court at the Hearing, the Court order'd the Cause to stand over, and Doyle to be brought before the Court, notwithstanding the Appellant pressed to have his Cause determined, and produced a Sequestration against Doyle for not Appearing to his Bill.

Trinity-Vacation,  
1726.

Doyle put in his Answer, and the Appellant in Order to speed his Cause, replied thereto in Michaelmas-Term, 1726.

The said Doyle having delayed Re-joining, and being gone out of Ireland, the Appellant moved the Court, and obtained an Order, that Service of his Attorney with a Subpoena to Re-joyn, should be deemed good Service; but he delayed Re-joining until the 15th of February, 1726; and then for further Delay, did on the 13th of March following, take out a Commission to examine Witnesses in London, returnable *Sine Dilation*.

November 3, 1726.

1st Answer to the  
Supplemental Bill.

The Appellant moved for, and obtained an Order for a *Duces tecum*, requiring the Respondent to bring into Court two Letters writ to him by Doyle, and which he had admitted to be in his Hands by his first Answer to the Appellant's Supplemental Bill; but the Respondent not obeying the same, the Appellant moved for an Attachment against him; but on the Respondent's Attorney's promising to bring them in in two Days, it was ordered that they should be brought in accordingly.

August 5, 1726.

The Respondent filed a Cross Bill against the Appellant, to which the Appellant put in his Answer, and the Respondent having obtained Leave to amend his Bill in Easter-Term, 1727, the Appellant put in his Answer to the said amended Bill the 23d Day of June 1727.

The Respondent by his Cross Bill charges, that he received an Account from Stephens and Hamilton, whom he had employed to withdraw the Effects from Venice, in Consequence of the Appellant's Assignment, that Ralphson and Hewitt of Venice, declared, They had attached the same by Virtue of an Order from Doyle, on the Protest of the Bill accepted by the Appellant.

The Respondent neglecting to bring in the Letters pursuant to the *Duces tecum*, the Appellant moved for an Attachment; but the Court referred it to Mr. Baron St. Leger, to inspect the Answers and Proceedings in the Cause, and to report, Whether the Respondent had any such Letter as in the said Order for the *Duces tecum* was mentioned, and the said Baron reported, It was thro' Mistake that the Respondent, in his Answer, said, He believed Doyle wrote such a Letter as in the *Duces tecum* is mentioned.

November, 17, 1727.

The Appellant having taken Exceptions to the Report, for that the same was contrary to the Confession of Ryves in his first Answer; which was sworn when he had all the said Doyle's Letters by him, and the Transactions were fresh in his Memory, and for that no Part of his subsequent Answers had explained that Confession to have been a Mistake, and the same coming on to be heard, the Court was pleased in Support of the Report, to admit two Letters said to be wrote by Messieurs Knox and Nesbitt of London, to the Respondent, to be read, tho' the same were not in the Cause, and to order the Respondent to make an Affidavit, which he having accordingly done, and therein swore that he was mistaken when he confessed the said Letter, the Court on the 18th of November 1727, allowed the said Affidavit to be read, and over-ruled the Appellant's Exceptions, and confirmed the Baron's Report.

November 23, 1727.

On Motion of the Appellant, an Order was made, That unless Depositions on the Commission taken out by Doyle should be returned in Ten Days, the Cause should be set down to be heard on the Pleadings.

November 29, 1727.

The Court was pleased to dissolve the Injunction formerly granted in this Cause, on Pretence of the Appellant's delaying to speed the same.

May 16, 1728.

On the Appellant's Application, both Causes came on to be heard, and after opening the Pleading for Ryves as well as for Doyle, the Court would not proceed to hear the Cause, but ordered the same to be struck out of the Paper of Causes for want of proper Parties, because the Commissioners in the Commission of Bankruptcy, said to be awarded against Doyle, were not before the Court.

The

July 9, 1728.

The Cause being again brought on to be heard, the Court was pleased to refuse to proceed on the Hearing of the same for want of the Assignees under the Commission of Bankruptcy against Doyle being before the Court.

July 1729.

The Appellant appealed to your Lordships from the Orders of the 10th of June 1727, and Mr. Baron St. Leger's Report made in pursuance thereof, and from the Orders of the 17th and 18th of November 1727, for confirming the said Report, and the Order of the 29th of November for dissolving the Injunction, and the several Orders of the 16th of May, and 9th of July 1728, and prayed the same might be reversed.

July 15, 1730.

The said Appeal was heard, and your Lordships were then pleased to order and adjudge, that the said Court of Exchequer should forthwith proceed to hear the Cause without making the Commissioners or Assignees of any Commission of Bankruptcy against Doyle Parties, and that both Parties be at Liberty to apply to the Court of Exchequer for that Purpose, and that the Injunction be revived from that Time only, till the Hearing of the said Cause without any Retrospect to Vacate or Punish any Thing that might have been done in pursuance of the Order for the Dissolution thereof since the making the said Order.

Decree 8th of Dec-  
1730.

That accordingly the said Cause was heard in Trinity-Term 1730, and again further heard the 8th of December 1730, and then the said Court was pleased to decree,

That it should be referred to the Officer to state an Account between the Appellant and Respondent on the Foot of the Securities entered into by the Appellant to the Respondent on the 19th of November 1720; in which Account the Respondent to be charged with all such Sums of Money as he received thereout, or might have received without his wilful Default; but the Respondent not to be charged with the Produce of the Venice Cargo; and as to Doyle, the Appellant, to be at Liberty to go to an Account with him, if he pleases, and on Return of the Report, such further Order should be made as should be just.

The Respondent knowing that the Appellant was come over into England to Appeal to your Lordships from the said Decree and Orders, did by several affected Delays, defer making up the said Decree until some Time in the Month of June last, thereby to prevent the Appellant from lodging his Appeal last Session of Parliament, and afterwards proceeded upon the Account before the Officer, but the Appellant being advised to lodge his Appeal, would not submit to go into any Account, or to any other Directions in the said Decree, and therefore did not attend the said Officer, nor give in any Charge against the Respondent, by which means the Respondent obtained a Report *Ex parte*, and on the 10th Day of July 1731, obtained an Order to confirm the same, unless Cause was shewn to the contrary.

July 9, 1731.

The Appellant being advised, that if the said Report should be confirmed, it might be attended with ill Consequences, moved the Court to shew Cause why the said Report should not be confirmed, and that he might be at Liberty to file a Discharge, and object to the Respondent's Account, but the Court was pleased not to make any Order thereon.

The Appellant conceiving himself aggrieved by the said Decretal Order of the 8th of December, 1730, the said Master's Report, and the Order of the 16th of July, 1731, and the Proceedings on the 9th of December, 1731, has appealed therefrom to your Lordships, and humbly hopes the same shall be reversed for these (amongst other) R E A S O N S.

I.

For that the said three Bills were drawn upon the Appellant, payable to the Respondent Ryves, as Doyle's Correspondent; and Ryves was accountable to Doyle only for what Money he should receive on these Bills, and the Appellant not having paid the Bills, but given Security for the Money due upon them, the Respondent Ryves must be considered as a Trustee for Doyle for such Securities, Ryves having delivered up to the Appellant, the Bills themselves to be cancelled, and refused to give Doyle Credit for them, and the Account ought to have been directed accordingly.

II.

The Appellant having (amongst other Things) assigned to the Respondent, in Trust for Doyle as a Security for the Value of these Bills, the Appellant's Share in the said Cargo of Salmon at Venice, and Doyle having caused the said Effects to be attached, and received the Value thereof, the Appellant ought to have Credit for the Produce thereof, and of what other Effects were assigned to the Respondent, and possessed by Doyle; for upon the Respondent's refusing to give Doyle Credit for those Bills, Doyle looked upon the Appellant as his Debtor, and therefore secured the Effects in Venice, and the Money from Moody to reimburse himself, so that if the Appellant should be decreed to be also indebted to the Respondent, on the same Demand, he will then be doubly charged with the same Debt, which is contrary to all the Rules of Equity.

III.

For that the Appellant ought to have an Allowance in the Account to be taken, for the Effects attached by Doyle at Venice, and for the Money recovered by him from Moody, on Account of the Appellant's Part of the Ship *Success* and her Cargo, seeing that those Effects, and a Part of the said Ship and Cargo, were part of the Security assigned by the Appellant to the Respondent, and must undeniably have come to the Respondent's Hands if it had not been for his wilful Default in refusing to give Doyle Credit for the Bills after they were exchanged for those Securities, at the Time that Doyle made him the Offer by Letter, and verbal Declarations to Knox and Nesbitt, Respondent's Correspondents in London.

IV.

For that the Respondent hath not made out any Title to the Bills drawn upon the Appellant, or to the Securities taken in Lieu of them; for notwithstanding he might have paid several Drafts of Doyle on him, yet it is evident, the Respondent was at the same Time accountable to Doyle for a Cargo of Deal Boards, which might have exceeded what he had paid, and therefore the Court of Exchequer should by their Decree not have considered the Respondent as having an absolute Right to the said Securities, especially when he in his Answer confesses, that he did not accept of them in Discharge of Doyle, but on the Foot of being accountable to him only, for what Sums he should receive out of the said Securities.

*The Appellant therefore humbly hopes the said Decree, Order, and Proceedings Appealed against, shall be Reversed, or that your Lordships will make such Order for the Appellant's Relief, as to your Lordships shall seem meet.*

P. YORKE.

W. HAMILTON.

